IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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J U D G M E N T

Kajju Lal
Vs.
State of Rajasthan

S. B. CIMINAL APPEAL NO.198/1988
UNDER SECTION 374 (2) CR.P.C.
AGAINST THE JUDGMENT DATED 20.04.1988 PASSED BY THE ADDITIONAL DISTRICT & SESSIONS JUDGE, RAJSAMAND

DATE OF ORDER :: 08th September, 2006

REPORTABLE

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Suresh Khumbhat, amicus curiae for the appellant.
Mr.Rameshwar Dave, Public Prosecutor.

BY THE COURT

This appeal has been filed by the appellant against the judgment dated 20th April, 1988 passed by the Additional District Judge and Sessions Judge, Rajsamand thereby convicting him for offence under Section 201 IPC and sentencing him to undergo rigorous imprisonment of six months with fine of Rs.300/-, in default payment whereof to further undergo one

month's simple imprisonment.

One Devi Singh Karwar resident of Pasund Kerawaton Ki Bhagal gave an information to SHO Police Station, Kelwara that he had heard about a dead body of a woman lying on side of the road leading from Lakhmawato Ka Guda to Nathdwara. He informed that the villagers have assembled there and the dead body was covered by Sari. The police on receiving this information, started an inquiry under Section 174 Cr.P.C. Panchnama of dead body was prepared as Exhibit-P/5. On examination of the dead body, it was found that name Tulshi was inscribed at the right hand of the deceased and no external injury was visible. In the Postmortem report Exhibit-P/8, it transpired that her death was caused by strangulation and there was fracture of the third cervical vertebra and compression over lower part of maduler and spinal cord was visible. The cause of death was described as asphyxia following strangulation or throttling. The police therefore registered a case under Section 302 IPC and commenced the investigation. During the course of investigation, police recorded statements of various witnesses and recovered the Jeep RST 6555 vide Exhibit-P/9 in which the dead body of the deceased was carried. At the conclusion of the investigation, the police found that the neck of the deceased was strangulated by her husband Vajja and other accused were with

him when her dead body was taken from the village to the place where from it was recovered. The police filed the challan against the accused Vajja for offence under Section 304/201 IPC and against other four accused namely Ghasi, Panna Lal, Bhanshi Lal and Kajju Lal for offence under Section 201 IPC.

The prosecution examined ten witnesses in support of its case and exhibited as many as 23 documents. On the conclusion of trial, the learned Additional District and Sessions Judge, Rajsamand by his judgment dated 24.04.1988 acquitted the accused Vajja of the charges under Section 304/201 IPC and other accused namely Ghasi, Panna Lal, Bhanshi Lal of the charge under Section 201 IPC but convicted the accused-appellant Kajju Lal for offence under Section 201 IPC and sentenced him as indicated above. Feeling aggrieved by the said judgment, the appellant has preferred the present appeal.

I have heard the arguments of Shri Suresh Kumbhat, the learned amicus curiae appearing for the accused appellant and Shri Rameshwar Dave, learned Public Prosecutor and perused the record.

Shri Suresh Kumbhat has argued that when the principal accused Vajja and all other accused Ghasi, Panna Lal, Bhanshi

Lal have been acquitted, the present appellant alone could not be convicted for offence under Section 201 IPC. His argument is that when the principal offence of culpable homicide not amounting to murder punishable under Section 304 IPC has been held to be not proved and the main accused has been acquitted of the said charge, the accused appellant alone could not be convicted for causing disappearance of the evidence of offence punishable under Section 201 IPC. In other words, he has argued that when the alleged offence itself has not been proved, causing disappearance of its evidence independently cannot be taken to have been proved. He argued that acquittal of the main accused Vajja also of the charge under Section 201 I.P.C. was all the more a valid reason for acquittal of the accused-appellant.

Learned counsel in support of this argument relies upon Division Bench judgment of Jammu and Kashmir High Court in Mazahar Ali & Anr. vs. State reported in 1976 Cri.L.J. 1629 in para 37 of which it was held as under:-

> "**37.** As the evidence against the appellants regarding the offence under Section 201 R.P.C. is also substantially the same as for the offence under S.302 R.P.C. the appellants conviction for the said offence under Section 201 R.P.C. also cannot be sustained. The proof of the commission of an offence is an essential requisite for bringing home the offence under Section 201 R.P.C. and in principal offence by

> the accused has not been proved, their conviction for the offence under Section 201 R.P.C. also is not sustainable. Reference in this connection may be made with advantage to the observations of their Lordships of the Supreme Court in AIR 1968 SC 829 = (1968 Cri LJ 1013) and 1973 Cri App Rep 255 = (1973 Cri LJ 1985 SC)."

Another argument of the learned amicus curiae Shri Suresh Kumbhat is that the allegation against accused-appellant is that he along with three other accused namely Kasi, Panna and Banshi Lal helped Vajja (husband of the deceased) to remove her dead body from village Tantol and that it was accused-appellant Kajju Lal who went to fetch a taxi. This is based on statement of PW-8 Ishwar Singh. He was driver of the Jeep No.RST 7555. He stated that it was the present accused-appellant who had come to him when one more person on motor cycle and told him that wife of a labour was sick and she was to be taken from village Tatol to village Khelwada. He settled a sum of Rs.250/- as fare and went to said village with Kajju Lal. On reaching village, accused-appellant Kajju Lal told him that the lady has expired and now only her dead body was to be taken to the other village. All the accused took the dead body in her Jeep. The dead body was taken out of the Jeep on road after some distance from village Khelwada. Only Vajja, husband of the deceased, stayed there and all other accused came back in the Jeep. Accused appellant paid to him the taxi fare. The taxi

driver went back to Nathdwara.

Citing the aforesaid statement of PW-8 Ishwar Singh, the learned amicus curiae argued that the allegation against the appellant is that he merely helped Vajja to transport the dead body from one place to another and this fact by itself would not amount to causing disappearance of the evidence because the evidence still remained intact. He placed reliance on a Division Bench judgment of this Court in Bhagaban Kirsani & Anr. vs. The State report in 1985 Cr.L.J. 868 in para 4 of which it was held as under:-

> "4. We may point out at the outset that the order of conviction under S.201 read with S.34 of the Code was illegal and misconceived. Mere removal of the dead body of a murdered person from the place of occurrence to another place, by itself, would not amount to causing disappearance of the evidence of the murder, as held by this Court in State of Orissa v. Trinath Dash (1982) 54 Cut LT 83: (1982 Cri LJ 942) relying on the principles laid down by the Supreme Court and some High Courts in the cases referred to herein."

On the other hand, the learned Public Prosecutor supported the judgment passed by the learned trial court and argued that the learned trial court has rightly convicted the accused-appellant for offence under Section 201 IPC because PW-8 Ishwar Singh in his statement has categorically stated that he knew the accused-appellant from earlier time and therefore,

this witness identified the accused-appellant in the court. So far as the other accused are concerned, their identification by the said witness was not preceded by identification parade, his testimony for their identification in the court was not accepted because these accused were not named in the FIR. Learned Public Prosecutor further argued that even if the principal offence under Section 304 IPC has not been proved against the main accused, the offence under Section 201 IPC can still be proved by independent evidence and on that basis conviction can safely be recorded. He argued that the case of the present appellant was distinguishable from that of the other accused. It was the present appellant who had gone on a motor cycle to Nathdwara to fetch a taxi and he told the taxi driver that sick wife of a labour was to be taken from village Tatol to Khelwada. When they reached the village, he later told him that the woman had died, her dead body was now required to be taken to another village. It was accused-appellant who later on returned with the taxi driver to village Tatol and paid him the taxi fare. He therefore played an active roll in removal of the dead body from village Tatol to the place where from it was ultimately recovered. Learned Pubic Prosecutor therefore argued that no interference is called for in the judgment passed by the learned trial court and prayed that the present appeal may be dismissed.

I have given my thoughtful consideration to the arguments advanced by both the learned counsel and perused the case law cited as also the records.

A careful study of the judgment relied upon by learned amicus curiae in Mazahar Ali & Anr. Vs. State, it was in the facts of that case held by Division Bench of the Jammu and Kashmir High Court that since evidence against the appellant in that case for offence under Section 201 IPC was also substantially same as for the offence under Section 302 RPC (Ranvir Penal Code), conviction of the appellant for offence under Section 201 RPC alone cannot be sustained. The said observations were made by the Court at the conclusion of the judgment having held that offence under Section 302 RPC was not proved against the appellant and, therefore, when the same evidence was the basis for their conviction under Section 201, such conviction also cannot be sustained. It was in that context observed that "the proof of the commission of an offence is an essential requisite for bringing home the offence under Section 201 R.P.C. and in the present case the commission of the principal offence by the accused has not been proved, their conviction for the offence under Section 201 R.P.C. is not sustainable." The Court in this connection made reference to the earlier judgments of the Hon'ble Supreme Court in Suleman Rahiman & Anr. vs. State of

Maharashtra reported in AIR 1968 SC 829 and in Baikuntha Nath Chaudhary Vs. The State of Orissa reported in 1973 Cri.L.J. (SC) 1585. It would be evident from careful reading of the aforesaid two judgments referred to in para 37 in Mazahar Ali vs. State by Jammu and Kashmir High Court is that the Hon'ble Supreme Court in those cases had only observed that when the offence under Section 201 IPC is sought to be proved substantially on the basis of the same evidence on which the offence under Section 302 IPC was sought to be proved, the accused in the facts of those cases were entitled to acquittal under Section 201 IPC when they were acquitted of the offence under Section 302 IPC.

It is trite law that a decision is an authority for what it actually decides and not for what can be logically deduced therefrom. While searching for ratio of a precedent, the court will have to bear in mind that every judgment must be read applicable to particular facts proved or assumed to be proved, since generality of expressions which may be found therein are not intended to be expositions of the whole of law, but are governed and qualified by particular facts of the case in which such expressions are to be found. [Re.- Quinen v. Leathem (1901) AC 495 (HL)].

Controversy with regard to question of law raised in this case was set at rest by a Constitutional Bench of the Hon'ble Supreme Court in Smt. Kalwati & Anr. vs. The State of Himachal Pradesh reported in AIR 1953 SC 131 in para 22 in which their Lordships held as under:-

> "**22.** It was urged for her by Mr.Mathur that as she was acquitted of this offence by the Judicial Commissioner, and as there has been no appeal by the Government against the acquittal, she cannot now be convicted of the same by this Court. This argument proceeds on a fallacy, Section 201 is not restricted to the case of a person who screens the actual offender, it can be applied even to a person guilty of the main offence, though as a matter of practice a Court will not convict a person both of the main offence and under S. 201. The Judicial Commissioner acquitted Kalawati of the offence under S.201 for which she was convicted by the Sessions Judge, only because he thought that the main offence itself, namely, murder, was brought home to her. But if we think for the reasons given above that it would not be safe to convict her of the main offence the acquittal is no legal impediment to her conviction under s. 201. It was held by the Privy Council in Begu v. Emperor, 52 Ind. App. 191 (P.C.) that in a charge of murder under S.302 a conviction under S. 201 without a further charge being made was warranted by the provisions of S.237, Criminal P.C. If Kalawati had been acquitted of an offence under S.201 independently of the charge of murder against her, it would have been a different matter. But as her acquittal is so intimately related to the charge of the main offence, and as it took place only for the reason that she was held guilty of murder, there is no bar to the restoration of the conviction under S.201."

In the light of the aforequoted authoritative pronouncement of law it must be held that even if the offence under Section 304 IPC has not been proved against the main accused, conviction under Section 201 IPC can still be independently recorded. In fact, the whole argument of the learned amicus curiae proceeds, if I may so so , on an unfounded assumption that no offence under Section 304 IPC was convicted. Merely because the prosecution in the present case has not been able to prove the charge under Section 304 IPC against the main accused Vajja beyond reasonable doubt, this by itself cannot be taken as proof of the fact that no offence under Section 304 IPC was committed. Inability of the prosecution to prove the principal offence does not prove that the offence has at all not been committed. I therefore hold that even if the prosecution fails to prove the principal offence against the main accused, conviction under Section 201 IPC can still be independently recorded.

I shall now advert to examine the arguments advanced by the learned amicus curiae that mere removal of dead body from village Tantol to the place where from it was recovered does not make out any case under Section 201 IPC. Another ancillary argument of the learned amicus curiae is that when the main accused was also, apart from Section 304 IPC, separately

charged for offence under Section 201 IPC and this charge has also not been proved against him, how possibly the accused-appellant alone could be convicted for offence under Section 201 IPC although the entire evidence against him is that he along with other three accused only helped the main accused Vajja in removal of the dead body of his deceased wife from village Tantol to the place where from it was recovered.

The Division Bench of Orrisa High Court in Bhagban Kirsani (supra) was dealing with the case where three appellants were convicted under Section 302 read with Section 34 IPC for having committed murder of Champa on June 1st, 1982 in a jungle and also under Section 201 read with Section 34 of the Code for removing the dead body of the deceased and throwing it elsewhere. Each of the appellants was sentenced to undergo imprisonment for life for their conviction under Section 302 read with S.34 IPC and to undergo rigorous imprisonment for a period of three years for their conviction under S.201 read with S.34 IPC. The Division Bench on examination of the evidence set aside the conviction and sentenced of all three appellants under Section 302 read with Section 34 IPC and in the self same judgment, the Division Bench held that mere removal of the dead body of a murdered person from the place of occurrence to another place, by itself, would not amount to causing

disappearance of the evidence of the murder. The Court relied on an earlier judgment of the same Court in State of Orissa Vs. Trinath Dash reported in 1982 Cri. L.J. 942.

I have respectfully studied the aforesaid judgment of Orrisa High Court in Bhagaban Kirsani. In my view, whether or not removal of dead body from one place to another by itself would constitute offence under Section 201 IPC would depend on facts of each case and nature of evidence adduced therein. This cannot be laid down as a law of universal application that no offence under Section 201 shall be made out in every such case where the accused are found guilty of removing dead body of a person in a murder case or the offence of the like nature.

Keeping in mind all these principles of law, I am now called upon to examine whether or not the fact that the accused-appellant at the askance of the main accused Vajja, brought taxi and helped him carry the dead body from village Taton to place where from it was recovered and paid the taxi fare to PW-8 Ishwar Singh would prove the charge of causing disappearance evidence of the crime against him. The prosecution has not produced any evidence whether when the accused-appellant went to Nathdwara to fetch the taxi, he had the knowledge of the fact that deceased had died or he merely

believed on version given to him by the accused Vajja that he should hire the taxi for carrying his ailing wife to another village. The prosecution has also not been able to prove that the accused was in any manner privy to the offence of culpable homicide not amounting to murder of the deceased or had shared this secret with the main accused Vajja. The acquittal of other three accused by the learned trial court on the ground that their identification by PW-8 Ishwar Singh was made in the Court for the first time which was not preceded by a test identification parade although may not prove the offence under Section 201 IPC against them but nonetheless can be used as an additional circumstance to find whether or not the accused appellant had played a similar role in helping the main accused Vajja in removing the dead body and transporting it to another place. Not only the main offence of Section 304 IPC has not been proved against the main accused Vajja but also the offence under Section 201 IPC for which he was charged simultaneously, has not been proved against him.

In the facts of the present case, removal of the dead body at the instance of the main accused Vajja who is the husband of the deceased whose dead body was alighted from the taxi and was placed on the side of main road where from it was ultimately recovered does not tentamount to causing

disappearance of the evidence, particularly when the main accused Vajja who according to case originally set up by the prosecution in removal of the dead body from one place to another was ultimately acquitted of not only the principal offence under Section 304 IPC but also the offence under Section 201 IPC. Charge of causing disappearance of evidence the crime has not been proved beyond reasonable doubt against the accused appellant thus entitling him to benefit of doubt. In these circumstances, conviction of the accused-appellant alone recorded under Section 201 IPC cannot be sustained and therefore, both conviction and sentence awarded to the accused-appellant in the present appeal are liable to be set aside.

In the result, the appeal succeeds. The judgment passed by the learned trial court convicting and sentencing the accused-appellant for offence under Section 201 IPC is set aside and the accused-appellant acquitted of the charge under Section 201 IPC. His bail bonds and surety may be discharged.

[MOHAMMAD RAFIQ],J.

Ashwini/-